IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/11/2003

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THE HON'BLE MR.JUSTICE P.K.MISRA
AND
THE HON'BLE MR.JUSTICE T.V.MASILAMANI

CIVIL MISCELLANEOUS APPEAL NO.58 OF 1995

The Regional Director,
E.S.I.Corporation,
Madras-34. .. Appellant.

-Vs-

P.Manickam,
Proprietor,
Thirumurugan Engineering
Works, Unit 2,
Tiruchy Engineers Industrial
Co-op., Ancillary Society,
SIDCO Industrial Estate,
Tiruverumbur, Trichy-14. .. Respondent.

Civil Miscellaneous Appeal Under Section 82 of the Employees' State Insurance Act, 1948, Central Act XXXIV of 1948) against the order dated 24.3.1994 passed by the Principal District Judge, Tiruchirapalli.

!For appellant: Mr.Desappan

^For Respondent: No appearance.

:J U D G M E N T
(Judgment of the Court was delivered by P.K.MISRA,J)

Heard the learned counsel appearing for the appellant. In spite of notice, the respondent has not appeared.

2. The present appeal is directed against the order dated 24.3.1994 passed by the Principal District Judge, Tirucharapalli, allowing the petition filed under Section 75(A) of the Employees' State Insurance Act 1948,(hereinafter referred to as 'the A . The aforesaid proceedings was initiated by the present respondent. There is no dispute that the present respondent is the proprietor of Thirumurugan Engineering Works, which was an ancillary industry doing work for BHEL. In January 1987, the present appellant has passed an order to the effect that the present respondent was

liable to pay a sum of Rs.10,571.50 as Employees' State Insurance Contribution. The aforesaid order was challenged by filing the application under Section 75(A) of the Act.

3. The main contention was to the effect that the persons working in the factory being less than 20, the Act was not applicable. It was also contended that the Corporation had wrongly considered the Casual Employees who were working under the Contractor to come to a conclusion that more than 20 persons were employed.

4. The trial Court relying upon a decision of the Supreme Court reported in Calcutta Electric Supply Corporation Ltd., v. Subhash Chandra Bose and others (Vol.80 FJR(S.C) 301) came to the conclusion that the workmen who were employed by the contractor should not have been considered as part of the employees of the present respondent.

5. The learned counsel appearing for the appellant has contended that in view of the definition of the word "Employee", as defined under Section 2(9) of the Act, there is no escape from the conclusion that the employees under the Contractor, who were working within the premises of the factory, were also to be considered as employees of the present respondent.

The relevant portion of Section 2(9) is as follows:

"employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and

(i)xxxx

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service."

6. In the present case, there is no dispute that the persons who were employed under the so called contractor, were employed in connection with the work of the factory. There is no dispute that they have been carrying out the work within the premises of the factory. In such circumstances of the matter, there is no escape from the conclusion that such employees under the contractor are also to be considered as employees of the present respondent, as such persons who have been employed within the premises of the factory are belonging to the present respondent.

7. The trial Court has placed reliance on the decision of the Supreme Court reported in 80FJR (SC) 301 (supra) which was not concerned with the similar case on hand. There, the question was whether there was supervision over the employees who had been engaged by a contractor, but the present question was not directly raised in the said decision nor it was decided. The decision reported in Regional Director Employees' State Insurance Corporation, Madras Vs. South India Flour Mills (P) Ltd. (AIR 1986 Supreme Court 1686) applies directly to the facts of the present case. The trial Court has erroneously appreciated the decision of the Supreme Court reported in AIR 1986

SC 1686 (supra) which ran counter to the subsequent decision of the Supreme Court. As a matter of fact both the decisions were on different aspect and were not relevant to the facts of the case. It was erroneous on the part of the trial Court later impliedly overruling the decision of the Supreme Court reported in AIR 1986 SC 1686 (supra). Since the only ground on which the Trial Court has held that the employees were less than 20 numbers is not sustainable, the order passed by the trial Court is set aside and the order dated 8.1.1987 passed by the present appellant is restored. Since there is no appearance, there will be no order as to costs.

gr.

To

The Principal District Judge, Tiruchirapalli.

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